

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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May 10, 2013

**TO:** Commissioners and Alternates

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**SUBJECT: Draft Staff Recommendation for AB 1273 (Ting): The Pier 30-32 Revitalization Act**  
(For Commission consideration on May 16, 2013)

## Summary and Recommendation

Assembly Bill 1273 (mailed on May 3, 2013) by Assembly Member Ting (San Francisco) was introduced on February 22, 2013 at the request of the Mayor of San Francisco and the Port of San Francisco to amend and update earlier state legislation for Piers 30-32 on the San Francisco waterfront to set standards for consistency with the public trust doctrine and the Burton Act trust regarding a proposed development by the Golden State Warriors to rehabilitate the piers and construct a new multi-use venue and basketball arena, open space, maritime, retail and parking uses and construct other improvements on Seawall Lot 330. As currently drafted, the legislation would authorize the use of Piers 30-32 for the proposed multi-use venue project (subject to compliance with CEQA and other regulatory requirements) and satisfy requirements for findings of consistency with the public trust doctrine and the Burton Act if the Port Commission finds that the conditions set forth in the proposed bill are satisfied. The staffs of the San Francisco Bay Conservation and Development Commission (BCDC) and the State Lands Commission (SLC) have provided comments on the legislation to Port staff without committing the Commission to any position on the legislation. The SLC staff has written to the Legislature expressing the view that it is appropriate for the City to seek legislation for a finding of trust consistency for the proposed project in view of the Legislature's prior actions involving Piers 30-32 and Seawall Lot 330. The Port has accepted many of the staffs' suggestions and the three staffs continue to work together productively to resolve outstanding issues.

The BCDC staff recommends that:

1. The Commission support continued staff-to-staff discussions in an effort to narrow and/or resolve outstanding issues;
2. The Commission adopt a position of "oppose unless amended" until such issues are resolved, and transmit that position in writing to members of the State Legislature; and



3. The Commission direct staff to return to the Commission with further recommendations on the legislation after such discussions are completed.

Alternatively, the Commission may want to consider the City and Port's request to: (1) inform the Legislature of BCDC's concerns; and (2) consider a position on the bill after further discussions.

#### Background on the Public Trust Doctrine

**The Public Trust Doctrine.** The common law public trust doctrine originated in the Roman Code of Justinian. Public trust lands are described as lands lying under navigable waters and filled former tidelands and submerged lands, which are owned by the public and held in trust for the people by the State. Trust lands may be conveyed by the State Legislature to local governments. The Burton Act conveyed such lands on the San Francisco waterfront to the City and County of San Francisco in 1968 for trust purposes. The San Francisco Port Commission administers lands granted in trust to San Francisco subject to the public trust and the terms and conditions of the Burton Act.

Although the Legislature may convey trust lands, the trust cannot be terminated unless the Legislature makes certain findings, including that the lands are no longer useful for trust purposes. Trust lands are held in trust for all citizens of the State and, therefore, must generally serve statewide rather than local public purposes. In general, uses on trust lands must be water-related and in furtherance of commerce, fisheries, navigation, conservation and recreation (e.g., marinas, ports, fishing piers, and docks). Non-trust uses that do not serve a public purpose (e.g., residential and non-maritime commercial uses) are generally not permitted on trust lands. However, courts have determined that the public trust is a flexible doctrine that can accommodate changing public needs. Thus, the use of public lands for non-traditional trust purposes that are ancillary or incidental to trust uses that directly promote, do not interfere with, and are necessary for a trust use to be feasible, are generally permitted (e.g., hotels, restaurants, parking lots, and restrooms). Also, the use of public trust lands for purposes not traditionally viewed as trust uses, such as ballparks and convention centers, sometimes have been authorized by the courts, the Legislature and SLC if the project taken as a whole contains major elements that are found to be consistent with trust purposes.

Ultimately, the responsibility for determining how public trust lands should be used resides with the Legislature, subject to judicial review. Each public trust determination, whether it is made by the Legislature, SLC, the Port, or BCDC, is unique, which makes comparisons of projects difficult. For example, Pacific Bell Park (as it was originally called) is not a traditional public trust use, but is an open-air, outdoor baseball facility with commanding public views of the Bay with associated public plazas and waterfront access. It is located primarily on filled tidelands at the end of the Embarcadero. Only a small portion of the project is located on pilings over the water, and is within BCDC's jurisdiction. On the other hand, the cruise ship terminal and mixed-use development at Piers 30-32, authorized by prior State legislation and approved by BCDC (although never constructed at Piers 30-32) was anchored by a traditional public trust, water-dependent use with ancillary but substantial non-trust office, retail and parking components to help finance the terminal. It was considerably smaller in mass than the proposed arena, and contained a significant public benefits package, including the accelerated removal of Pier 36 and the securing of funds to complete construction of the Brannan Street Wharf. Although the Port constructed the terminal at Pier 27, the Port is providing these public benefits by constructing the Brannan Street Wharf with Port funds. The Brannan Street Wharf is scheduled to open to the public in July 2013. The Port has provided the Commission with other instructive examples of public assembly uses on urban waterfronts including piers, arenas, municipal auditoriums, and convention centers in Southern California, as well as other notable harbor structures throughout the world. (The SLC staff will be available to discuss comparisons among various projects throughout California during the May 16, 2013 Commission meeting.)

**The Role of the State Legislature.** The State Legislature, subject to judicial review, makes the ultimate decision about uses of public trust lands. According to SLC, “the Legislature may create, alter, amend, modify, or revoke a trust grant so that the tidelands are administered in a manner most suitable to the needs of the people of the state.” The Legislature has the power to authorize the non-trust use of tidelands if such use does not conflict with public trust needs in order to serve a broader statewide public purpose. Examples along the San Francisco waterfront include: AB 1389 (Shelley) in 2001 (as subsequently amended), authorizing the cruise ship terminal and associated retail and office space on Piers 30-32 and terminating the trust on portions of Seawall Lot 330; SB 815 (Migden) terminating trust use restrictions on certain seawall lots along the waterfront and authorizing an exchange of lands at Treasure Island in 2007; and AB 418 (Ammiano), authorizing the use of historic buildings at Pier 70 for non-trust purposes in 2011.

**The Role of the State Lands Commission.** The State Legislature granted exclusive authority to SLC to manage the State’s ungranted trust lands in 1938. SLC also retains residual and oversight authority where trust lands have been legislatively granted to local jurisdictions. SLC commonly leases trust lands to public and private entities for trust purposes. SLC also is authorized by statute to enter into boundary line and title settlement agreements to terminate the State’s interest in trust property in exchange for other lands more useful or beneficial to the trust provided certain findings are made and the lands are no longer useful for trust purposes. SLC approval for a particular project on granted trust lands is generally not required. However, SLC may opine on the trust consistency of a particular project at its own discretion or if requested by a grantee to make a trust consistency determination under the Public Resources Code (e.g., Pacific Bell Park). SLC staff also often provides comments to the Port on the consistency of a project or use with the public trust. The staffs of SLC and the Office of the Attorney General are working with the Port and BCDC on the proposed development on Piers 30-32, and have reviewed many other projects along the waterfront for trust consistency for the Port and BCDC (e.g., the Ferry Building, Piers 1½, 3 and 5, the Exploratorium, the cruise ship terminal previously proposed at Piers 30-32, the mixed-use development proposed at Piers 27-31, and developments proposed at Candlestick, Hunters Point, and Treasure Island).

The State Lands Commission summarizes the uses of trust lands as follows:

Uses of trust lands, whether granted to a local agency or administered by the State directly, are generally limited to those that are water dependent or related, and include commerce, fisheries, and navigation, environmental preservation and recreation. Public trust uses include, among others, ports, marinas, docks and wharves, buoys, hunting, commercial and sport fishing, bathing, swimming, and boating. Public trust lands may also be kept in their natural state for habitat, wildlife refuges, scientific study, or open space. Ancillary or incidental uses, that is, uses that directly promote trust uses, are directly supportive and necessary for trust uses, or that accommodate the public’s enjoyment of trust lands, are also permitted. Examples include facilities to serve visitors, such as hotels and restaurants, shops, parking lots, and restrooms. Other examples are commercial facilities that must be located on or directly adjacent to the water, such as warehouses, container cargo storage, and facilities for the development and production of oil and gas. Uses that are generally not permitted on public trust lands are those that are not trust use related, do not serve a public purpose, and can be located on non-waterfront property, such as residential and non-maritime related commercial and office uses. While trust lands cannot generally be alienated from public ownership, uses of trust lands can be carried out by public or private entities by lease from this Commission or a local agency grantee. In some cases, such as some industrial leases, the public may be excluded from public trust lands in order to accomplish a proper trust use.

**The Role of BCDC.** BCDC reviews projects in San Francisco Bay for consistency with the public trust doctrine under the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Waterfront Special Area Plan* (SAP). The McAteer-Petris Act is considered an exercise of the public trust by the Legislature for the San Francisco Bay. Section 66651 of the Act authorizes the Commission to adopt and amend the Bay Plan to establish policies for reviewing and acting on projects within its jurisdiction. The Bay Plan requires the Commission to ensure that any action it takes affecting lands subject to the trust “is consistent with the public trust needs for the area.” The SAP authorizes the Commission to approve permitted uses on piers if they are “consistent with the Public Trust Doctrine and the Port’s Legislative Trust Grant (Burton Act),” and provides the context for the review of the proposal’s consistency with BCDC’s laws and policies on fill, public access, public views and public benefits. The current proposal at Piers 30-32 is located within an area of the waterfront from Pier 35 to China Basin where an amendment to the SAP in 2000 waived McAteer-Petris Act requirements that uses be water-oriented and that available upland alternatives be used, in exchange for a package of public benefits that included fill removal, significant public plazas and access, views, and historic preservation. Additionally, Finding 18 of the SAP states that “[b]ecause the Public Trust Doctrine and the Port’s legislative trust grant (Burton Act) recognize the need to protect valuable public aquatic resources, the expansion of allowable uses on redeveloped piers to allow public trust uses would not invite inappropriate uses of Bay resources.” The SAP also authorizes the Commission to make an early “Public Trust Determination” in consultation with SLC if requested by the Port.

In making its trust determination, BCDC normally consults with and relies upon the advice of SLC and its staff. For the major development projects approved by the Commission in the Northeastern Waterfront since the adoption of the Bay Plan and SAP policies cited above, BCDC has relied on the advice of the SLC staff (Ferry Building, Pier 1, Piers 1-1/2, 3 and 5, and the Exploratorium advice letters), a determination made by the State Lands Commission (Pacific Bell Park) or the Legislature (Bryant Street Pier Project, AB 1389), or the Port acting in its capacity as trustee of granted lands (James R. Herman International Cruise Terminal at Pier 27). However, the Bay Plan and SAP authorize BCDC to make an independent determination of consistency with the public trust doctrine.

**The Role of the Port of San Francisco.** The Port of San Francisco was granted the State’s trust lands within the San Francisco waterfront to hold as trustee on behalf of the State. As a condition of the transfer of responsibilities for the San Francisco waterfront through the Burton Act, the State required the City to create the Port Commission and confer upon it the authority to manage the San Francisco waterfront for the citizens of California. Although the Port is a Department of the City and County of San Francisco, the Port receives no financial support from the City and relies almost solely on the leasing of Port property for its revenues. Under the Burton Act, the Port may lease lands and facilities “for limited periods not exceeding 66 years...for purposes consistent with the trusts upon which the land are held by the state,” and the funds derived from such leases must be used solely for trust purposes. If the Port determines that lands are no longer required for trust purposes, it may lease lands for non-trust purposes, although this is rarely done without receiving additional legislative authorization or SLC consent (e.g. SB 815, Migden).

According to SLC, in cases where the Legislature grants tidelands to local governments by statutes such as the Burton Act:

The statutes’ provisions must be interpreted so as to be consistent with the paramount rights of commerce, navigation, fishery, recreation and environmental protection. This means that the tidelands may be devoted to purposes unrelated to the common law public trust to the extent that these purposes are incidental to and accommodate projects that must be located on, over or adjacent to the tidelands. These non-trust uses are not unlimited, for there are limits on the Legislature’s authority to free tidelands from trust use restrictions.

### Development on Piers 30-32 Subject to AB 1273

As described in the Port's briefing to the Commission on May 2, 2013, the development subject to AB 1273 includes an approximately 135 foot-tall, 553,778-square-foot pile-supported sports and entertainment venue and multi-purpose indoor arena along the Embarcadero at the east end of Piers 30-32.<sup>1</sup> The arena is the tallest building proposed on the approximately 13-acre pier. Lower-scale retail buildings are proposed to be built along the Embarcadero. The conceptual site plan shows that different development elevations are proposed at the project site. Retail uses and pedestrian access are proposed at the Embarcadero or street level. Additional retail and parking are proposed at levels 2 and 3 (approximately 10 and 30 feet above the Embarcadero). A 50,000-square-foot plaza/concourse and access to the arena is proposed at a level approximately 35 feet above the Embarcadero, and an 85,000-square-foot upper plaza terrace is proposed at a level approximately 50 above the Embarcadero.

The multi-purpose 17,000-19,000 seat indoor arena is being proposed as the new home of the Golden State Warriors, and as an event venue for other public assembly uses, including conventions, performing arts, and other purposes.<sup>2</sup> According to the Port, the arena would host approximately 43 Warriors home games per year (not including playoff games) and 150 additional events, with annual expected paid attendance of 2,240,000 persons. The project proponents state that the development would include more than 50% improved public open space, 105,000 square feet of visitor-serving retail and restaurants, a 500-space parking garage, a 21,000-square-foot basketball practice facility, and 40,000 square feet of event management and team office space.

Part of the proposed development involves construction on undeveloped portions of Seawall Lot 330, which is located across the Embarcadero from Piers 30-32. Seawall Lot 330 is filled tidelands, approximately 2.3-acres (101,330 square feet), and is outside BCDC's jurisdiction. Portions of Seawall Lot 330 are no longer subject to the public trust pursuant to a land exchange approved by SLC in 2003, and the remainder of Seawall Lot 330 is subject to legislation enacted in 2007 (SB 815, Migden) and 2011 (AB 418, Ammiano), which lifted the trust use restrictions and authorized the Port to convey the remainder of Seawall Lot 330 to a private entity, respectively. Portions of Seawall Lot 330 were sold in 2003 and the proceeds were used to help finance the construction of the Brannan Street Wharf. The Port plans to sell or lease the remainder of Seawall Lot 330 to the Warriors at fair market value, and use the proceeds to help finance repairs to the substructure of Piers 30-32. At Seawall Lot 330, the Warriors plan to construct 33,000 square feet of retail space, 200-300 parking spaces, 100-130 residential units, and a 200-250 room hotel. AB 1273 notes that the City and Port plan to help finance the \$120 million costs of repairing the pier's substructure for the proposed development by using the proceeds of the sale or lease of Seawall Lot 330, using rent credits for leasing the Pier to the developer, and using property tax increment financing from an infrastructure financing district that includes the site. The Port has stated that the appraised fair market value of Piers 30-32 and SWL 330 together is far less than the estimated pier rehabilitation costs, and that the arena itself would be privately financed.

According to the Port, the existing pier structure is nearing the end of its useful life. The findings in AB 1273 state that the Port estimates it would cost approximately \$45 million to remove the Pier, and \$120 million to make it useable for the proposed development. Piers 30-32 were built in 1912 and the piers were joined in 1950. In 1984, the pier sheds were destroyed by fire, and the piers now serve as a parking lot for approximately 1,000 cars and a temporary berth for overflow cruise ships and other deep draft vessels. In 2001, the Legislature authorized the Port to approve a cruise ship terminal and mixed-used development with 325,000 square feet of office space at Pier 30-32 (AB 1389, Shelley, as subsequently amended). AB 1389 required the Port to remove Pier 36 and secure funds to complete construction of the Brannan Street Wharf before a permit for the terminal was approved by BCDC. The Commission supported AB 1389 and

<sup>1</sup> Since the Port's May 2, 2013 briefing, the project sponsor has presented a revised project design that includes reducing the height of the multi-purpose venue to 125 feet, increasing pier level open space, reducing the square footage of retail use and decreasing the number of parking spaces.

<sup>2</sup><http://sfgov3.org/modules/showdocument.aspx?documentid=3078>

approved the terminal in 2005 (Permit No. 5-03). Although the terminal ultimately was constructed at Pier 27, the authorized terminal at Piers 30-32 would have included a two-story, 40-foot high, 100,000-square-foot main terminal structure (a portion of which could have been 85 feet high), 190,000 square feet of trust and non-trust retail space, 325,000 square feet of office space on the second and third levels of the pier buildings, 425 parking spaces, approximately 242,980 square feet of public access on the first and second level of the project, a perimeter public walkway and public plazas.

**AB 1273.** AB 1273 authorizes the Port of San Francisco to approve a mixed-used development on Piers 30-32 that includes a multi-purpose sports arena and entertainment venue for events and public assembly if the Port finds that the development meets the following conditions in Section 5 of the bill:

1. Attracts people to the waterfront, increases public enjoyment of the Bay, encourages public trust activities, and enhances public use of trust assets and resources;
2. Provides multiple significant views of the Bay Bridge and the Bay from a variety of elevations and vantage points, including the interior of the arena, minimizes interference with public views to the extent feasible, provides free public access to exterior portions of the arena, and provides free public views of the interior of the building during events;
3. Achieves maximum feasible public access as determined by BCDP;
4. Includes public plazas on a substantially permanent basis;
5. Provides continuous public access around the perimeter of the piers year-around with limited exceptions for temporary safety, security and maritime purposes;
6. Includes a significant maritime program including, but not limited to, a fire station and berthing facilities, deep water berthing at the east end of the pier, facilities for direct public access to the water by human-powered boats or swimmers on the south side of the pier, and water taxi and transit docking;
7. Limits non-maritime office space to 70,000 square feet by primary tenants of the arena for venue supporting or trust retail uses;
8. Limits retail venues to venue-supporting or trust retail uses;
9. Limits parking to 500 spaces to accommodate visitors and not residential uses, substantially screened from public view, and designed to avoid interference with pedestrian, wheelchair and bicycle traffic along Herb Cain Way;
10. Provides 15 days of public trust events, uses and programs, with at least three at the arena, including free and low-cost visitor-serving events;
11. Makes a public community room available for free or low-cost use;
12. Provides a plan to address sea-level rise through 2050, with enforceable strategies for an adaptive management approach for the duration of the ground lease; and
13. Includes a hotel or visitor-serving uses at Seawall Lot 330 that materially enhance public trust uses on Pier 30-32 and the waterfront.

AB 1273 also requires the Port to submit a report on the public trust program to SLC five years after the arena opens and every five years thereafter to ensure that the required trust-related activities are effectively implemented. It authorizes SLC to require the City and the Port to develop an implementation plan to ensure the objectives of the bill are met. The bill sunsets if the development is not approved within ten years, and provides for a 60-day statute of limitations for legal challenges to the development.

AB 1273 provides that determinations of consistency of the public trust doctrine required by statute or regulation—including any determinations that otherwise would be made by BCDC or SLC—are satisfied if the Port determines that the development at Piers 30-32 meets all the terms and conditions in Section 5 of the bill. Section 7 of the bill contains a savings clause which provides that, except for the findings of consistency with the public trust doctrine, nothing in the bill is intended to limit BCDC’s authority or discretion to approve or deny permits for the development on Piers 30-32 under the McAteer-Petris Act, Bay Plan and Special Area Plan, including the authority and discretion to impose conditions and enforce permits for the project.

#### **Registered Support and Opposition to AB 1273**

**Supporters.** City and County of San Francisco [SPONSOR]; A Philip Randolph Institute, San Francisco and Western Region; Asbestos, Lead and Old Laborers, Local Union No. 67; Bay Area Council; Boys and Girls Clubs of San Francisco; Bricklayers and Allied Craftworkers Local 3, California; Brightline Defense Project; Building Owners and Managers Association of San Francisco; California Labor Federation; California State Association of Electrical Workers; California State Council of Laborers; California State Pipe Trades Council; CAL Insurance & Associates, Inc.; Charity Cultural Services Center; Golden State Warriors; Hotel Council of San Francisco; International Brotherhood of Electrical Workers, Local Union 6; International Union of Operating Engineers, Local Union No. 3; Laborers' International Union of North America, Local Union No. 261; Mission Hiring Hall; San Francisco Chamber of Commerce; San Francisco Citizens Initiative for Technology & Innovation; San Francisco Deputy Sheriff's Foundation; San Francisco Fire Department; San Francisco Travel Association; Sign Display and Allied Crafts, Local Union No. 510; State Building and Construction Trades Council of California; Sustainable Futures; United Association of Plumbers, Pipefitters, and SprinklerFitters, Local Union No. 483; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry; United Brotherhood of Carpenters and Joiners of America, Local Union 22; Western States Council of Sheet Metal Workers; Young Community Developers, Inc.; and individual letters (7).

**Opposition.** Mayors of the Cities of Berkeley, Oakland, Richmond and San Leandro; San Francisco BayKeeper; San Francisco Tomorrow; San Francisco Waterfront Alliance; Save the Bay; and Sierra Club California.

#### **Staff Recommendation**

**Options Available.** The Commission could decide to take a position on AB 1273 or choose to not take a position at this time. Should the Commission decide to adopt a position on AB 1273, it has five options from which to choose:

1. Support;
2. Support If Amended;
3. Neutral;
4. Oppose Unless Amended; and
5. Oppose.

**The Staff recommends that:**

1. The Commission support continued discussions between the BCDC staff, Port and City staff and the SLC staff in an effort to narrow and/or resolve outstanding issues including parking, definition of trust retail uses, a public benefits package, oversight of the Port’s trust determination, the effect of the height and bulk of the arena, and the waiver of BCDC’s public trust determination under the McAteer-Petris Act, the Bay Plan and the SAP;
2. The Commission adopt a position of “oppose unless amended” until such issues are resolved, and transmit that position in writing to members of the State Legislature;

3. The Commission direct the staff to return to the Commission with a further recommendation on the legislation after such discussions end; and
4. Regardless of the option the Commission chooses, the Commission give direction regarding how it wants the staff to proceed.

**Reason for Recommendation.** The Port has been responsive to issues raised by the staff of BCDC, SLC and the Attorney General's Office, including recommendations to facilitate public trust uses at Piers 30-32. Despite many notable changes, staff believes that:

1. The bill should be and likely can be improved through further discussions;
2. The Commission should not support the legislation unless it is satisfied that the complete legislative package furthers the overall goals of BCDC and provides adequate public benefits; and
3. The Commission should consider whether it would be advantageous for BCDC to retain its authority to determine public trust consistency until the Commission has sufficient details about the project to weigh the project's proposed public benefits and detriments. Other developments along the waterfront have greatly benefited from the trust consistency review of the SLC and BCDC including Pacific Bell Park, the Exploratorium, the Ferry Building, the Aquarium of the Bay, and the Mills Corporation Piers 27-31 Mixed-Use Development (although it did not receive the necessary local entitlements and was never constructed).

Several important issues that affect the project's public trust consistency have not been resolved at this point. They include:

1. **Balancing Trust and Non-Trust Uses.** The public trust doctrine is flexible and accommodates changing public needs. The conveyance of public lands and waters for non-trust purposes ancillary to trust uses have been approved in the past by the Legislature, BCDC and SLC (e.g., the cruise ship terminal approved at Piers 30-32, was a trust-consistent use that also included substantial ancillary non-trust uses needed to finance the construction of the terminal). However, AB 1273 does the opposite; it authorizes a primarily non-trust, non-water-dependent use—the indoor arena, non-trust office and retail space, and parking below public open space—with ancillary trust uses (e.g., a maritime program, public access, and other trust uses). Staff believes that further discussions should occur to ensure an adequate balance between trust and non-trust uses.
2. **Public Benefits.** Section 7 of the bill contains a savings clause that preserves BCDC's discretion to approve or deny permits for the project under the McAteer-Petris Act, Bay Plan and SAP. However, it also provides that the public trust is deemed satisfied if the Port finds that the development is consistent with the conditions in Section 5. This may create the perception that the legislation provides all the public benefits needed for the project, and could make it difficult for BCDC to determine if the development's public benefits clearly exceed public detriments as provided in Section 66605 of the McAteer-Petris Act. Until a package of public benefits for the proposed project is offered, or the bill is clarified to ensure that the Port and the City of San Francisco can provide adequate public benefits in the project, it would be premature for BCDC to support AB 1273.
3. **Project Size.** AB 1273 lacks specificity with regard to the size, height and bulk of the project. This makes it difficult to determine impacts on public views and other public trust uses, including interference with water-dependent trust uses of the property and the character of the Embarcadero Historic District. Without more details, including the projected mass of the arena and the amount of authorized parking on the piers, staff believes that it is premature to support the bill that waives an important component of BCDC's review of the project.



4. **Retail Uses.** The bill allows 70,000 square feet of non-maritime office space for “venue-supporting” or trust retail uses and allows “venue-supporting” uses in the 105,000 square feet of visitor-serving retail proposed in the development. However, the bill does not define the term “venue-supporting,” which could include non-trust uses. The staff looks forward to working with the Port staff to clarify this proposed use.
5. **Independent Review.** Section 5 of the bill requires the Port to provide a report to the SLC that documents how required trust-related activities are effectively implemented and it authorizes the SLC to require an implementation plan to ensure that the bill’s objectives are met. However, to ensure that the project is trust-consistent initially, the legislation should require that the SLC make findings regarding compliance with the conditions and standards in Section 5 of the legislation. The Executive Officer of the SLC has proposed adding a provision to the bill that would require SLC to find that the project meets the trust consistency standards set forth in the legislation, and the Port staff has indicated that it is not opposed to including it in the bill.

**Possible Alternative to the Staff Recommendation.** Port and City staff have requested that the Commission not take a position on the legislation at this time because:

1. Discussions on the legislation are ongoing;
2. The Port and City staff believe that an “oppose unless amended” position will be interpreted by many of the interested public simply as an “oppose” position, which the Port and City staff describe as extremely detrimental to future discussions; and
3. As a demonstration of good faith, the Port and City staff have committed to BCDC staff that the legislation will not be considered by any Senate committee until the Commission has considered taking a position based on the outcome of future discussions.

The BCDC staff believes that the Commission should consider whether to agree to this approach. Two issues that the Commission must also consider are:

1. The State Assembly, under its rules of procedure, is required to vote on the legislation by June 1, 2013; and
2. The final day for Senate policy committees to approve bills is July 6, 2013 and the Commission is not scheduled to meet between June 20 and July 18 (Thursday, July 4 would be the regular meeting date for the Commission). This schedule could require the Commission to consider any changes to the legislation at its June 20, 2013 meeting.

If the Commission were to agree with the Port’s and City’s request, the BCDC staff recommends that the staff recommendation to not support the legislation be held in abeyance and, instead, the Commission substitute that recommendation with the following language:

“Direct the staff to notify the State Legislature of its concerns about the legislation, inform the members that discussions are ongoing, and state that the Commission will consider the legislation at a future meeting.”